

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 239 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DAULATRAI BHAGWANJI

Versus

STATE OF GUJARAT

Appearance:

MS ARCHANA AMIN FOR MR YOGESH S LAKHANI for
Appellant
MR VB GHARANIA, AGP for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 28/07/2000

ORAL JUDGEMENT

1. This Appeal is filed against the judgment and
order of District Court, Junagadh, in Regular Civil
Appeal No. 143 of 1981, dismissing the Appeal of the

present appellant against the judgment and decree passed by the court of Jt. Civil Judge (SD) of Junagadh, in Regular Civil Suit No. 280 of 1974.

2. Brief facts relevant for the purpose of this Appeal goes to show that the present appellant, who was appointed as a Constable, in Police Department, on 13th September, 1951 by the Dy. Superintendent of police in Junagadh District. Thereafter, on 19th September, 1965, he was promoted as Head Constable by Inspector General of Police. However, thereafter, on 12th July, 1967, the appellant was involved in a bribe case and he was tried by the Special Judge in Spl. Case No. 3 of 1968 along with one other Police Constable Nanji Vira, but vide judgment dated 16th April, 1968, the present appellant was honourably acquitted by the Special Judge in above said case, however, Department thought it expedient still to deal with the appellant departmentally and, therefore, a charge sheet was issued to the appellant regarding the same incident and in pursuance of this charge sheet, the appellant was dismissed from service on 31.12.1969. However, during this period, vide his letter, he tendered resignation with a statement that his resignation be accepted from 16th September, 1970. This letter was addressed to DSP concerned and on receiving this letter, DSP concerned accepted resignation of appellant on 3rd July, 1970, so as to give effect of resignation from 16th September 1970 as demanded by the appellant.

3. On the above mentioned backdrop of fact, the appellant filed the above mentioned Regular Civil Suit No. 280 of 1974, in the court of Jt. Civil Judge (SD) of Junagadh, praying for declaration that order of his dismissal as passed by the DSP on 3rd December, 1969 was null and void and against the principle of natural justice and the provisions of the Constitution. Appellant also prayed for further declaration that the order accepting his resignation by DSP on 3rd July, 1970 was also null and void. He also claimed money decree for Rs. 1,029.22 ps for the suspension period from 28.7.67 to 31.1.1969. He also claimed amount of salary etc. from 16th September, 1970 to 31st October, 1973. He also prayed for a declaration that he may be declared to be continued in service.

4. Learned trial judge vide his order dated 30th April, 1980, came to the conclusion that the suit of the plaintiff was required to be partly decreed and partly

dismissed. Learned trial judge held that the order of dismissal dated 31st December, 1969 was illegal and null and void and that the appellant plaintiff was entitled to an amount of Rs.1029.22 ps being the amount of suspension allowance of the period referred above. The rest of the reliefs asked by the plaintiff were rejected by the trial court including the declaration regarding the order of acceptance for resignation to be null and void, which was passed on 3rd July, 1970. The present appellant filed a Regular Civil Appeal No. 143 of 1981 in the Court of District Judge at Junagadh, which also met the fate of dismissal vide order of District Judge, Junagadh, dated 13th September, 1983, and hence, this Second Appeal by the present appellant - original plaintiff.

5. Learned Advocate Ms. Archana Amin for learned Advocate Mr. Y.S. Lakhani for the appellant and learned AGP Mr. V.B. Gharania for the respondent were heard.

6. While admitting this Appeal, this Court has formulated the following substantial questions of law to be decided in Appeal. :

1. In the fact & circumstances of the case
when the appellant was promoted to H.C.
by the order of D.I.G. whether D.S.P.
can accept the resignation, is the
question involved in the case?
2. Whether in the facts & circumstances of
the case, period of limitation begins to
resume from 3.7.70 or 16.9.70 is the
question involved in the case?

7. So far as substantial question No.1 above is concerned, learned Advocate Ms.Archana for the appellant has vehemently submitted that though the appellant was appointed by the DSP, he was promoted by IGP as Head Constable on 9th September, 1965. It was further urged that this promotion to the post of Head Constable has been granted to the Appellant by IGP and, therefore, the resignation if tendered by the appellant requires to be accepted only by Inspector General of Police because the appellant was not only promoted but was appointed as Head Constable by Inspector General of Police. It was, therefore, urged that the acceptance of resignation by the District Superintendent of Police, who is an

authority below the rank of I.G.P., suffers from vice of being opposed to natural justice. The rule of law is, the resignation must be accepted by the authority not lower in rank than the appointing authority. As against that, Mr.Gharania, learned AGP, has opposed this contention.

8. I am unable to agree with the contention advanced on behalf of the appellant. True it is that the appellant was promoted to the post of Head Constable, by Inspector General of Police. By no stretch of reasoning, it could be said that this promotion was by way of appointment to the post of Constable. In the fact and circumstances of this case, the promotion cannot be labelled as appointment. It is an admitted fact that the appellant's first appointment as Constable was by District Superintendent of Police. Therefore, the acceptance of resignation by the District Superintendent of Police is not in any manner illegal or void. Not only that the Paragraph 251 of the Bombay Police Manual, specifically authorizes the Deputy Superintendent of Police and the Police Commissioner to accept the resignations. This Rule is clear and, therefore, the District Superintendent of Police derives statutory authority to accept the resignation and hence the contention that the order of acceptance of resignation suffers from infirmity because the same is accepted by the authority lower in rank than the appointing authority i.e. Inspector General of Police, is without any merit. There is no rule of law that resignation can only be accepted by the appointing Authority. Here, in this case as stated above, such power is derived by the authority by virtue of statute.

9. For the aforesaid reasons, the substantial question No.1, as framed above, is decided in favour of the respondent, and so far as the substantial question No.2 is concerned, the limitation begins to resume from 16th September, 1970 because the appellant has expressed his desire to accept his resignation from that date. So far as this issue is concerned, there is no dispute amongst the parties and, therefore, this substantial question of law requires no decision.

10. For the aforesaid reasons, this Second Appeal fails and the same is dismissed.

(J.R. Vora, J.)

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